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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

LUIS SALAZAR MORENO,

Defendant and Appellant.

F077741

(Super. Ct. Nos. VCF328856,
VCF354949)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Brett R. Alldredge, Judge.

William D. Farber, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Detjen, Acting P.J., Smith, J. and Snauffer, J.

STATEMENT OF THE CASE

A. Case No. VCF328856

By information filed on February 22, 2016, Moreno was charged with shooting at an occupied motor vehicle (Pen. Code, § 246;¹ count 1); assault with a firearm (§ 245, subd. (a)(2); counts 2 and 3); felon in possession of a firearm (§ 29800, subd. (a)(1); count 4); possession of ammunition (§ 30305, subd. (a)(1); count 5); possession for sale of a controlled substance (methamphetamine) (Health & Saf. Code, § 11378; count 6); and misdemeanor possession of a controlled substance (cocaine) (Health & Saf. Code, § 11350, subd. (a); count 7). The information alleged as to counts 1 through 6 that Moreno committed the offenses while on felony probation within the meaning of section 1203, subdivision (k). The information further alleged as to counts 2 and 3 that Moreno personally used a firearm within the meaning of sections 667.5, subdivision (c), 1192.7, subdivision (c), and 12022.5. Moreno pleaded not guilty, and he denied all special allegations, prior convictions, and enhancements at his arraignment on February 23, 2016.

On April 24, 2018, the court amended count 1 on the People's motion to charge assault by force likely to produce great bodily injury (§ 245, subd. (a)(4)). In response to an overall indicated sentence of four years in state prison in conjunction with case No. VCF354949 and other, unrelated misdemeanors and a pending probation violation, Moreno withdrew his not guilty pleas and pleaded no contest to counts 1 and 6.

Before entering his no contest pleas, Moreno was advised of, and he waived, his constitutional rights to a trial by jury, to confront and cross-examine witnesses, to subpoena witnesses for his defense and to testify in his own defense, and his privilege against self-incrimination.² Moreno stipulated to a factual basis pursuant to *People v.*

¹ Subsequent undesignated statutory references are to the Penal Code.

² *Boykin v. Alabama* (1969) 395 U.S. 238; *In re Tahl* (1969) 1 Cal.3d 122.

West (1970) 3 Cal.3d 595.³ The court found Moreno's no contest pleas were knowingly, voluntarily, and intelligently made, accepted the pleas, and found Moreno guilty of felony counts 1 and 6.

On June 6, 2018, the trial court denied probation and, in accord with the indicated sentence, sentenced Moreno on count 1 to the middle term of three years in state prison to run concurrent to the sentence imposed in case No. VCF354949.⁴ On count 6, the court sentenced Moreno to the middle term of two years in state prison also to run concurrent to the sentence imposed in case No. VCF354949. The court dismissed all other counts and special allegations.

The court also imposed a \$300 restitution fine pursuant to section 1202.4, subdivision (b) and imposed, but suspended, a parole revocation fine in an equal amount pursuant to section 1202.45. The court imposed an \$80 court operations assessment pursuant to section 1465.8, subdivision (a)(1); a \$60 criminal conviction assessment pursuant to Government Code section 70373; and a \$585 laboratory fee pursuant to Health and Safety Code sections 11372.5, subdivision (a) and 11372.7, along with other statutory assessments and fines as specified in paragraph 8 of the probation report.⁵

³ According to the probation officer's report, which was based on the police report, on December 23, 2015, Moreno shot a firearm at victims S.X. and T.N. while they were traveling in S.X.'s vehicle in Visalia. After Moreno's arrest at his residence near the scene of the shooting, he was found to be in possession of methamphetamine for sale.

⁴ On November 29, 2018, in response to Moreno's request, the trial court corrected the minutes of the plea and sentencing proceedings and the abstract of judgment specifying that the count 1 conviction was in violation of Penal Code section 245, subdivision (a)(4).

⁵ At sentencing, citing *People v. Watts* (2016) 2 Cal.App.5th 223, Moreno objected to the imposition of penalty assessments attached to the laboratory analysis fee (Health & Saf. Code, § 11372.5) and drug program fee (Health & Saf. Code, § 11372.7) in both Case Nos. VCF328856 and VCF354949. In *People v. Ruiz* (2018) 4 Cal.5th 1100 (*Ruiz*), the Supreme Court determined the lab fee and drug program fee are punishment for the offense to which they are attached and are thus actually fines imposed as part of the punishment for the offenses. (*Id.* at pp. 1118-1119.) The court disapproved of

Finally, the court awarded Moreno 118 days of actual credit plus 118 days of local conduct credit for a total of 236 days of presentence custody credit pursuant to section 4019.

B. Case No. VCF354949

By felony complaint filed on August 21, 2017, Moreno was charged with manufacturing a controlled substance other than PCP (concentrated cannabis) (Health & Saf. Code, § 11379.6, subd. (a); count 1). The complaint alleged that at the time of the commission of the offense Moreno was released from custody on bail or his own recognizance in case No. VCF328856 within the meaning of section 12022.1. Moreno pleaded not guilty, and he denied the special allegation at his arraignment on the same date.

On April 24, 2018, in response to an indicated sentence of three years in state prison (in conjunction with case No. VCF328856 and other unrelated cases), Moreno withdrew his not guilty plea and pleaded no contest to count 1.

Before entering his no contest plea, Moreno was advised of, and he waived, his constitutional rights to a preliminary hearing, trial by jury, to confront and cross-examine witnesses, to subpoena witnesses for his defense and to testify in his own defense, and his privilege against self-incrimination. Moreno stipulated to a factual basis based on the laboratory results and police report.⁶ The court found that Moreno's plea was knowingly, voluntarily, and intelligently made, accepted the plea, and found Moreno guilty on count 1.

People v. Watts, supra, and other cases which had held these fees were not punishment and thus not fines. (*Ruiz, supra*, 2 Cal.5th at p. 1122, fn. 8.)

⁶ On August 17, 2017, during a probation search of Moreno's residence by agents of the Tulare County Agencies Regional Gang Enforcement Team, an active honey oil laboratory was located in Moreno's residence. Moreno was found to be in possession of 10 pounds of marijuana and numerous tools used to extract and process honey oil from marijuana. (1 CT [Probation Report] 11, 12, 32.)

On June 6, 2018, the trial court denied probation and, in accord with the indicated sentence, sentenced Moreno on count 1 to the lower term of three years in state prison. The sentence imposed in this case was designated the principal term. In addition, the court imposed a \$300 restitution fine pursuant to section 1202.4, subdivision (b) and imposed, but suspended, a parole revocation fine in an equal amount pursuant to section 1202.45. The court also imposed a \$40 court operations assessment pursuant to section 1465.8, subdivision (a)(1); a \$30 criminal conviction assessment pursuant to Government Code section 70373, a \$585 laboratory analysis fee pursuant to Health and Safety Code sections 11372.5, subdivision (a) and 11372.7, along with statutory assessments and fines as specified in paragraph 6 of the probation report;⁷ and a \$1170 fine pursuant to Health and Safety Code section 11379.6, subdivision (a). Finally, the court awarded Moreno 85 days of actual credit plus 84 days of local conduct credit for a total of 169 days of presentence custody credit pursuant to section 4019.

STATEMENT OF APPELLATE JURISDICTION

Moreno filed a timely notice of appeal in Case Nos. VCF328856 and VCF354949 on June 25, 2018. This appeal is from a final judgment after no contest pleas and is based on the sentence or other matters occurring after the plea. (Pen. Code, § 1237 and Cal. Rules of Court, rule 8.304(b)(4)(B).)

APPELLATE COURT REVIEW

Moreno's appointed appellate counsel has filed an opening brief that summarizes the pertinent facts, raises no issues, and requests this court to review the record independently. (*People v. Wende* (1979) 25 Cal.3d 436.) The opening brief also includes the declaration of appellate counsel indicating that Moreno was advised he could file his own brief with this court. By letter on November 30, 2018, we invited Moreno to submit additional briefing. To date, he has not done so.

⁷ See footnote 4, *ante*.

After independent review of the record, we have concluded there are no reasonably arguable legal or factual issues.

DISPOSITION

The judgment is affirmed.